

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SILVO R. ILLESCAS,

Plaintiff,
-against-

ANTHONY J. ANNUCCI et al.,

Defendants.

No. 21 Civ. 8473 (NSR)
ORDER OF PARTIAL DISMISSAL

NELSON S. ROMÁN, United States District Judge:

Plaintiff Silvio R. Illescas, currently incarcerated at Coxsackie Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs. In an Opinion & Order dated December 7, 2022, this Court dismissed Plaintiff's Complaint and granted Plaintiff leave to amend and replead any claims that were dismissed without prejudice. (ECF No. 95.) Plaintiff timely filed an Amended Complaint on July 31, 2023 (ECF No. 117), adding the following Defendants: Nicolet T. Thompson; John Doe Correctional Officer #1, #2, #3, #4; Dr. Mohamme; Dr. Odenyl; Susanna Nayshuler; Dr. Kim, and Mary N. Ashong. (ECF No. 117.) Plaintiff, however, did not include claims previously asserted against Defendants Anthony J. Annucci, Vassar Brothers Medical Center, Daniel E. Laurie, Sajin A. Pillaj, Jesse M. Wolstein, Dr. Bruce R. Gendron, Hector Ojeda-Martinez, Sehrish Shahid, and Dr. Robert U. Mmereole.

As a result of Plaintiff's decision not to include claims against these Defendants, those claims previously asserted against Defendants Anthony J. Annucci, Vassar Brothers Medical Center, Daniel E. Laurie, Sajin A. Pillaj, Jesse M. Wolstein, Dr. Bruce R. Gendron, Hector Ojeda-Martinez, Sehrish Shahid, and Dr. Robert U. Mmereole and dismissed without prejudice were deemed dismissed with prejudice. (ECF No. 121.)

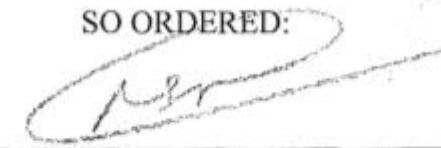
In a letter dated August 14, 2023, Plaintiff explained that he inadvertently neglected to include Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Gendron, Ojeda-Martinez, Shahid, and Mmereole as defendants in his Amended Complaint and requested this Court “consider” the “Defendants not added” in the Amended Complaint. (ECF No. 127.) The Court interpreted Plaintiff’s letter as a motion to reconsider this Court’s Order at ECF No. 121 dismissing with prejudice claims previously-asserted against Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Ojeda-Martinez, Shahid, and Mmereole.

In an Opinion and Order dated September 13, 2023, the Court granted Plaintiff leave to file a Second Amended Complaint to include claims alleged in the Amended Complaint or claims previously-asserted against Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Ojeda-Martinez, Shahid, and Mmereole. (ECF No. 136.) Plaintiff was directed to file the Second Amended Complaint no later than October 27, 2023. In light of several prior extensions, the Court expressly warned that it would “**not entertain further requests from Plaintiff to extend the time to file the Second Amended Complaint**”. (*Id.*) (emphasis in original). The Court further noted that if Plaintiff failed to timely file his Second Amended Complaint, the Court would “deem the Amended Complaint to be the operative complaint, dismiss with prejudice claims previously-asserted against Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Ojeda-Martinez, Shahid, and Mmereole, and enter judgment in their favor, pursuant to Federal Rule of Civil Procedure 54(b).” (*Id.*)

As of this date, November 6, 2023, Plaintiff has failed to file a Second Amended Complaint and has not shown good cause for this failure. Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Ojeda-Martinez, Shahid, and Mmereole have requested the Court via letter to dismiss the claims against them. (ECF No. 144.) Therefore, the Court dismisses with

prejudice all claims previously-asserted against Defendants Annucci, Vassar Brothers Medical Center, Laurie, Pillaj, Wolstein, Ojeda-Martinez, Shahid, and Mmereole, and enters judgment in their favor. The Court additionally deems the Amended Complaint to be the operative complaint. Thus, Plaintiff's only remaining claims in this action are against Nicolet T. Thompson; John Doe Correctional Officer #1, #2, #3, #4; Dr. Mohamme; Dr. Odenlyl; Susanna Nayshuler; and Dr. Kim, and Mary N. Ashong. (ECF No. 117.) The Clerk of Court is kindly directed to mail a copy of this Order and ECF No. 144 to *pro se* Plaintiff at Plaintiff's address listed on ECF and to show service on the docket.

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

Dated: November 7, 2023
White Plains, NY